

NOV 06 2001

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF CHIROPRACTIC EXAMINERS

IN THE MATTER OF THE SUSPENSION :	
OR REVOCATION OF THE LICENSE OF :	
	Administrative Action
SCOTT WHITE, D.C. :	
License No. MC4139 :	FINAL ORDER OF
	DISCIPLINE
TO PRACTICE CHIROPRACTIC :	
IN THE STATE OF NEW JERSEY :	

The Board of Chiropractic Examiners entered a Provisional Order of Discipline on June 28, 2001 provisionally revoking the license of Scott White ("respondent") to practice chiropractic in this State based on his conviction for criminal sexual contact in violation of N.J.S.A. 2C: 14-2(c)(1) and barring an application for reinstatement for a period of at least five years.* The conviction, according to the terms of the Provisional Order, provided grounds for disciplinary action because the conviction established gross malpractice pursuant to N.J.S.A. 45:1-21(c), and professional misconduct pursuant to N.J.S.A. 45:1-21(e), and the

* On March 16, 2001, the court sentenced respondent to three years probation. Respondent was further ordered to attend Alcoholics Anonymous meetings, to undergo counseling, to pay a \$5,000 fine, and to have no contact with the victim.

conviction itself provided a basis for disciplinary action pursuant to N.J.S.A. 45:1-21(f).

Respondent was offered an opportunity to respond to the Provisional Order by submitting a request for modification or dismissal of the Board's provisional findings of fact and conclusions of law and by submitting any and all reasons why the findings of fact or conclusions of law should be modified or dismissed, including any reasons for mitigation of the sanction to be imposed. The Provisional Order further stated that the Board would review the submissions to determine whether further proceedings would be necessary.

Respondent, through his counsel Mark M. Cheser, Esq., submitted a letter stating that the Provisional Order had misstated the charge to which respondent had pled guilty. Respondent pled guilty to a charge of fourth degree sexual contact, which contact took place on October 26, 1999. That contact was described in counsel's letter as "he [respondent] ... touched one area through her clothing." Counsel further wrote that respondent chose not to proceed to a criminal trial "to avoid a life threatening gamble and to prepare to fight the issue out in a civil or administrative forum where the cost of failure would be much less severe." Respondent now seeks a hearing on the circumstances underlying the conviction.

The Attorney General opposed respondent's request by filing a motion to deny the request for a hearing and asking that the Board enter a Final Order of Discipline based on the materials before it. The Attorney General acknowledged that the Provisional Order did not correctly cite the criminal violation to which respondent pled. Respondent pled guilty to the fourth degree charge of criminal sexual contact with a female patient in violation of N.J.S.A. 2C:14-3b. The judgment of conviction reflects that fact. The Board, therefore, on its own motion, will amend the Provisional Order to reflect the correct statutory and factual basis for the plea.

In opposing the request for a hearing, the Attorney General asserted that respondent did not submit any evidence to dispute the fact of the conviction and argued that, in the absence of contested facts, there was simply no need for a hearing. The Attorney General cited to case law supporting his position. See Limongelli v. New Jersey State Board of Dentistry, 137 N.J.Super. 317, 325 (1993); High Horizons Dev. Co. v. Dep't of Transportation, 120 N.J. 40, 53 (1990); and the recent, unpublished case of In the Matter of Andrew T. Fanelli (Superior Court, Appellate Division, Docket A-3974-00T5, September 21, 2001), a copy of which was provided to the Board and counsel for respondent. Further, in his letter memorandum, the Attorney General cited portions of the plea

colloquy in which respondent admitted the conduct of touching the patient for his own sexual gratification.

Upon review of the materials before the Board, it is clear that respondent has not disputed the fact of the conviction. Indeed, respondent stood before the criminal court and acknowledged his guilt and his attorney's letter to the Board reiterated the conduct. Yet respondent sought a hearing to introduce evidence to assail the victim's credibility and to attempt to establish that the events related to the office visit of October 29, 1999 did not occur. That October 29 visit, as now established, is not the basis for the Board's action.

The facts forming the basis for disciplinary action are not in issue and further proceedings are not necessary. Respondent has admitted the conduct and has pled guilty to a crime. Respondent's conviction and the underlying conduct that gave rise to the conviction provide the bases for disciplinary action pursuant to N.J.S.A. 45:1-21 (c), (e), and (f). The Board will not allow those facts to be re-litigated.

Having found that there are bases for disciplinary action, the Board has examined the submissions for purposes of mitigation of the penalty to be imposed. The Provisional Order contemplated that respondent's license to practice chiropractic should be revoked and that the Board would not entertain an application for reinstatement for a period of at least five years. That order further

contemplated that, prior to reinstatement, respondent complete a program of therapeutic education in sexual boundaries and provide a record of monitoring by the Physicians Health Program related to his alcohol abuse.

Respondent has submitted for the Board's review, more than thrity five (35) letters individuals, both patients and business associates, who attest to his character and his professionalism. Respondent has also submitted the presentence report provided to the sentencing judge. Those letters speak of a man who appears to provide competent professional services to patients of all age groups. The letters attest to his charitable works in the community and his friendship to many of his patients.

Absent from the submissions, however, is any statement by respondent himself. His only words before the Board are those of his plea allocution. He has not provided a statement indicating remorse for his conduct; indeed even at this point in time his response to the Board's action is to "blame the victim" by attempting to attack her credibility and/or to show that she fabricated her allegations when he refused her advances on October 29, 1999. By this approach, respondent has demonstrated a lack of insight into his conduct. He continues to minimize the impact of his actions on those who place their trust in him. He has not provided any evidence that he has submitted to a psychological evaluation or that he has taken any educational program relating to

appropriate boundaries with patients. The conduct that led to his conviction is conduct that this Board cannot and will not tolerate from its licensees. That respondent's conviction is for sexual contact in the fourth degree rather than sexual contact in the second degree does not change this outcome. The Board finds that his continued practice is not in the best interest of the public.

THEREFORE, IT IS ON THIS 8th DAY OF October, 2001

ORDERED:

1. Respondent's license to practice chiropractic in the State of New Jersey is revoked. The Board will not entertain an application for reinstatement sooner than five (5) years from the entry of this order.

2. In connection with any application for reinstatement, respondent shall provide the following to the Board:

a. proof of successful completion of a program of therapeutic education in the area of sexual boundaries for professionals, approved in advance by the Board;

b. a record of monitoring for alcohol abuse conducted by the Physicians' Health Program of the Medical Society of New Jersey ("P.H.P.") and a record of attendance at Alcoholic Anonymous, as required by the P.H.P. or by his criminal sentence; and

c. proof of compliance with all terms of the criminal sentence imposed on March 16, 2001.

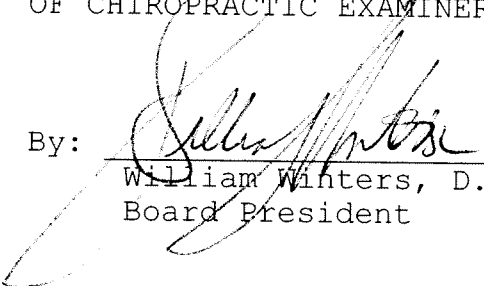
3. Prior to any reinstatement, respondent shall appear before the Board or a committee of the Board, to demonstrate his fitness to resume practice. The Board may require an independent psychological evaluation prior to reinstatement. The Board reserves the right to place any restriction on respondent's practice that it deems necessary to protect the public health, safety, and welfare.

4. Any practice by respondent in this State prior to formal reinstatement by the Board shall be deemed the unlicensed practice of chiropractic.

5. Respondent shall have a period of thirty days from the entry of this order to wind down the affairs of his practice. Respondent shall comply with the Board's directives applicable to licensees who have been suspended or revoked. A copy of the directives is attached to and made part of this order.

NEW JERSEY STATE BOARD
OF CHIROPRACTIC EXAMINERS

By:


William Winters, D.C.
Board President